

Rejections under 35 U.S.C. 103

Applicant thanks the Examiner for indicating that claim 5 includes allowable subject matter.

Claims 1-4 and 6-12, however, were rejected under 35 U.S.C 103 as unpatentable over U.S. Patent No. 6,550,944 (Kusagaya), which is assigned to Koito Manufacturing, the assignee of the pending application. As discussed below, applicant submits that the Kusagaya patent is not properly cited against the claims of the pending application.

The Kusagaya patent (as well as the corresponding published U.S. application) is not prior art under U.S. patent law. The U.S. filing date of the pending application (July 2, 2001) is earlier than the grant date (April 22, 2003) and the application publication date (November 22, 2001) of the Kusagaya patent. Therefore, neither the Kusagaya patent nor the published application is prior art under either 35 U.S.C. 102(a) or 102(b).

Under 35 U.S.C. 102(e), the *U.S.* filing date (not the Japanese filing date) of the Kusagaya patent and published application is the effective prior art date. Thus, the effective prior date of the Kusagaya patent and published application under 35 U.S.C. 102(e) is May 15, 2001. Although that date is before the *U.S.* filing date of the pending application (July 2, 2001), the pending application is entitled to the Japanese priority date (July 5, 2000), which is earlier than the effective prior art date of the Kusagaya patent and published application. Therefore, neither the Kusagaya patent nor the published application are prior art under 35 U.S.C. 102(e).

For the Examiner's convenience, an English-language translation of applicant's Japanese priority document is enclosed.

Furthermore, the Kusagaya patent and published application may not be cited against the claims of the pending application under section 103(c) of the Patent Act (relating to obviousness) because both the application and the patent are assigned to the same entity (Koito Manufacturing).

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Conclusion

In view of the foregoing remarks, applicant respectfully requests withdrawal of the rejections of the claims. Applicant submits that all claims are in condition for allowance.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 12/29/03

  
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